IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7292 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BALVANTJI MAGANJI THAKOR

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 7292 of 2001

MS DR KACHHAVAH for Petitioner No. 1

MR DP JOSHI, AGP for the Respondent

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/01/2002

ORAL JUDGEMENT

The petitioner herein came to be detained by virtue of an order passed by District Magistrate of Banaskantha, Palanpur on July 5, 2001 in exercise of

powers under Section 3 of the PASA Act.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority considered one offence registered against him with Pathwada Prohibition Police Station vide CR No. 5036/2001 dated Mar 15, 2001. The detaining authority also considered statements of two anonymous witnesses which were recorded by the sponsoring authority on May 22, 2001. The said statements came to be verified by Dy.S.P on May 26, 2001 and the order in question was passed on July 5, 2001.

3. Learned Advocate for the petitioner assails the order mainly on the ground of delay in passing the order indicative of an improper exercise of powers under the PASA Act, on the basis of ill-founded subjective satisfaction about the need for immediate detention.

4. Learned AGP opposes this petition. According to him, the time was consumed in following the required procedure.

5. The undisputed facts indicate that the statements of anonymous witnesses were recorded on May 22, 2001 and verified by Dy.SP on May 26,2001. Thereafter, the order was passed on July 5, 2001 i.e. after a lapse of about 5 weeks. No attempt is made to explain this delay. The grounds of detention if read, indicate that according to the detaining authority the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and for that purpose, detention under PASA is the only remedy as following ordinary law is likely to take more time. If the urgency was really felt, there would not have been so much of delay after verification of the statement. The lapse of 5 weeks indicate that there was no imminent danger to the society from the alleged illegal activities. The subjective satisfaction for immediate need for detention and exercise of powers under Sec. 3 of the PASA Act therefore, cannot be considered as genuine. The detention therefore, would stand vitiated.

6. It is clarified that this Court makes no observation regarding propriety of verification by the Dy.SP and the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Sec. 9(2), since the petition deserves to be allowed only on the above stated ground.

7. The petition is therefore, allowed. Order of

detention dated July 5, 2001 passed by the District Magistrate of Banaskantha, Palanpur is quashed and set aside. Detenu Balvantji Maganji Thakor be released from detention forthwith, if not required in any other case. Rule made absolute. No costs.

(A.L.Dave,J.)

*/Mohandas